

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: William A. Bessette  
Tammy J. Bessette**

**FILE NO.: OWTS-12-158  
X-ref. CI 12-122**

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Administrative History

The DEM issued an informal written notice to the Respondents on November 26, 2012 for the violations. The notice required that specific actions be taken to correct the violations. The Respondents failed to comply with the notice.

C. Facts

- (1) The subject property is located at 41 Shippee Schoolhouse Road, Assessor's Plat 10, Lot 17 in the town of Foster, Rhode Island (the “Property”).
- (2) The Respondents own the Property.
- (3) DEM inspected the Property on November 16, 2012. The inspection revealed that the onsite wastewater treatment system (“OWTS”) was being repaired as evidenced by:
  - (a) Observation and photographs of a mini-excavator staged onsite.
  - (b) Observation and photographs of disturbed ground surface in the area of the OWTS.
  - (c) Observation and photographs of polyvinyl chloride piping and crushed stone laid out on the ground surface in the yard in close proximity to the OWTS.

- (4) A review of DEM records revealed that the Respondents had not submitted an application to DEM for approval to repair the OWTS.
- (5) On December 3, 2012, William A. Bessette stated to DEM during a telephone conversation that he had replaced broken pipes, repaired the distribution box, added additional pipes, and replaced the crushed stone associated with the OWTS.
- (6) William A. Bessette does not possess a valid DEM OWTS Installer's license.
- (7) As of the date of this Notice of Violation ("NOV"), the Respondents have failed to comply with the DEM's *Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems* (the "OWTS Regulations") by submitting an application to DEM for approval to repair the OWTS.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **Rhode Island General Laws Section 5-56-1** – prohibiting any person from installing or repairing an OWTS or causing an OWTS to be installed or repaired without a valid license issued by DEM.
- (2) **DEM's OWTS Regulations**
  - (a) **Rule 8.2** – prohibiting any person from installing, constructing, altering or repairing any OWTS without having a valid OWTS Installer's license issued by DEM.
  - (b) **Rule 8.3** – prohibiting any person from installing, constructing, altering or repairing, or causing any OWTS to be installed, constructed, altered or repaired without first obtaining the Director's written approval of the plans and specifications for such work.
  - (c) **Rule 17.7** – requiring submittal of a repair application for a failed OWTS.

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) **IMMEDIATELY** cut and cap the effluent discharge pipe from the septic tank prior to the distribution box such that the septic tank functions as a holding tank and sewage is not discharged to the subsurface or surface of the ground. Take steps to reduce the discharge of sewage to the septic tank, such as through the installation and use of water conservation devices and fixtures, and arrange to have the septic tank pumped by a permitted septage transporter as frequently as necessary to prevent sewage from the septic tank from overflowing or breaking out onto the surface of the ground. A list of permitted septage transporters can be

obtained by contacting the DEM's Office of Waste Management at 222-4700 or from the DEM's web page at:

[www.dem.ri.gov/programs/benviron/waste/transpor/septage.pdf](http://www.dem.ri.gov/programs/benviron/waste/transpor/septage.pdf).

- (2) **Within thirty (30) days of receipt of this NOV**, submit a formal application and plan to the DEM in accordance with the DEM's OWTS Regulations (the "Application"). **Any repairs or modifications to the OWTS require the prior approval of the DEM.** The list of licensed OWTS designers can be obtained by contacting Deb Knauss at 222-4700, Ext. 7612 or from the DEM's web page at:  
[www.dem.ri.gov/programs/benviron/water/licenses/isds/pdfs/deslist.pdf](http://www.dem.ri.gov/programs/benviron/water/licenses/isds/pdfs/deslist.pdf).
- (3) The Application shall be subject to DEM review and approval. Upon review, the DEM shall provide written notification to you either granting formal approval or stating the deficiencies therein. Within fourteen (14) days (unless a longer time is specified) of receiving a notification of deficiencies in the Application, you must submit to the DEM a modified proposal or additional information necessary to correct the deficiencies.
- (4) Commence work on the project in accordance with the method approved by the Director within twenty (20) days of approval (unless otherwise expressly authorized by the Director in writing to commence work at a later time), and complete such work within one hundred twenty (120) days of said approval or other date specified by the Director. **The OWTS must be repaired by a DEM licensed installer unless written permission is received from DEM.**

F. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:
  - (a) **William A. Bessette and Tammy J. Bessette for One Thousand Dollars (\$1,000.00)**
  - (b) **William A. Bessette for One Thousand Dollars (\$1,000.00)**
- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within thirty (30) days of your receipt of this NOV. Payment shall be in the form of a certified check, cashiers check or money order made payable to the "General Treasury - Water & Air Protection Program Account," and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.

- (3) Penalties assessed against the Respondents in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the Director determines that reasonable efforts have been made to comply promptly with this NOV.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:
  - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
  - (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within twenty (20) days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk  
DEM - Administrative Adjudication Division  
One Capitol Hill, 2<sup>ND</sup> Floor  
Providence, RI 02903

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
  - (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.
- (2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, Esquire  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> Floor  
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.

- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of this NOV is being forwarded to the town of Foster wherein the Property is located to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 42-17.1-2(13), as amended.
- (7) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Joseph J. LoBianco, Esq. at the DEM Office of Legal Services at (401) 222-6607, ext. 2023. All other inquiries should be directed to Patrick Hogan of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7119.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section G above.

FOR THE DIRECTOR

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David E. Chopy, Chief  
DEM Office of Compliance and Inspection

Date: \_\_\_\_\_

CERTIFICATION

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_  
the within Notice of Violation was forwarded to:

William A. Bessette  
41 Shippee Schoolhouse Road  
Foster, RI 02825

Tammy J. Bessette  
41 Shippee Schoolhouse Road  
Foster, RI 02825

by Certified Mail.

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# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, OWTS SECTION

File No.: OWTS -12-158 and CI12-122

Respondents: William A. Bessette and Tammy J. Bessette

| GRAVITY OF VIOLATION   |                                   |           |                     |                                  |                   |
|--|-----------------------------------|-----------|---------------------|----------------------------------|-------------------|
| SEE ATTACHED "PENALTY MATRIX WORKSHEETS."  |                                   |           |                     |                                  |                   |
| VIOLATION No.<br>&<br>CITATION   | APPLICATION OF MATRIX             |           | PENALTY CALCULATION |                                  | AMOUNT            |
|  | Type                              | Deviation | Penalty from Matrix | Number or Duration of Violations |                   |
| D(2)(b) & D(2)(c) – Failure to submit a repair application and repair of OWTS without DEM approval | Type I<br>(\$1,000 Max. Penalty)* | Major     | \$1,000             | 1 violation                      | \$1,000.00        |
| D(1) & D(2)(a) – Repair of an OWTS without having a valid DEM OWTS Installer's License             | Type I<br>(\$1,000 Max. Penalty)* | Major     | \$1,000             | 1 violation                      | \$1,000.00        |
| <b>SUB-TOTAL</b>   |                                   |           |                     |                                  | <b>\$2,000.00</b> |

\*Maximum Penalties represent the maximum penalty amounts per day, per violation.

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$2,000.00**

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to submit a repair application and repair of an OWTS without DEM approval

VIOLATION NO.: D(2)(b) & D(2)(c)

| <b>TYPE</b>  |  |   |
|--|--|---|
| <p><b><u>X</u> TYPE I</b><br/> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p> | <p><b>TYPE II</b><br/> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p> | <p><b>TYPE III</b><br/> <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p> |

**DEVIATION FROM THE STANDARD**  
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

**FACTORS CONSIDERED:**

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondents repaired the OWTS without DEM approval and failed to submit a repair application for the system. The repair of failed septic systems in accordance with plans and specifications approved by DEM is a primary objective of the regulations and a major objective of the regulatory program.
- (B) **Environmental conditions:** Considered, but not utilized for this calculation.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** Single occurrence, specific date unknown. Evidence observed on November 16, 2012.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents did not take reasonable steps to prevent the violation. The Respondents failed to retain a licensed designer to evaluate the system and prepare and submit a repair application for DEM review. The Respondents then repaired the septic system without DEM approval. The Respondents also did not take reasonable steps to mitigate the violation. DEM issued an informal written notice to the Respondents on November 26, 2012 requiring that the Respondents submit an application to the DEM to properly repair the septic system. Thus far, the Respondents have failed to submit an application to the DEM.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondents willfully violated the applicable laws and regulations. The Respondents had full control over the occurrence of the violations. The violations were foreseeable.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

|                    |          |       |
|--------------------|----------|-------|
| <u>  X  </u> MAJOR | MODERATE | MINOR |
|--------------------|----------|-------|

| Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000 |              | TYPE I                             | TYPE II        | TYPE III       |
|--|--------------|------------------------------------|----------------|----------------|
| DEVIATION<br>FROM<br>STANDARD  | <b>MAJOR</b> | \$800 to \$1,000<br><b>\$1,000</b> | \$600 to \$800 | \$400 to \$600 |
|  | MODERATE     | \$600 to \$800                     | \$400 to \$600 | \$200 to \$400 |
|  | MINOR        | \$400 to \$600                     | \$200 to \$400 | \$100 to \$200 |

**PENALTY MATRIX WORKSHEET**

CITATION: Repair of an OWTS without having a valid DEM OWTS Installer’s License

VIOLATION NO.: D(1) & D(2)(a)

| <b>TYPE</b>  |  |   |
|--|--|---|
| <p style="text-align: center;"><u>  X  </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>   | <p style="text-align: center;">_____ <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p> | <p style="text-align: center;">_____ <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p> |
| <b>DEVIATION FROM THE STANDARD</b>   |  |   |
| THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.   |  |   |
| <p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> William A. Bessette repaired an OWTS without having a valid DEM OWTS Installer’s License. Repair of OWTSs only by a person with a valid DEM OWTS Installer’s License is of great importance to the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> Considered, but not utilized for this calculation.</p> <p>(C) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(E) <b>Duration of the violation:</b> Single occurrence, specific date unknown. Evidence observed on November 16, 2012.</p> <p>(F) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</p> |  |   |
| (continued)  |  |   |

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Mr. Bessette did not take reasonable and appropriate steps to prevent the violation. Mr. Bessette failed to make arrangements with an OWTS Licensed Designer and OWTS Licensed Installer to submit plans to DEM for approval of the OWTS repair and to construct the OWTS, respectively. Mr. Bessette partially mitigated the violation by his immediate ceasing of the OWTS repair upon DEM direction to do so.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Mr. Bessette willfully violated the applicable laws and regulations. Mr. Bessette had full control over the occurrence of the violation. The violation was foreseeable.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

|                    |          |       |
|--------------------|----------|-------|
| <u>  X  </u> MAJOR | MODERATE | MINOR |
|--------------------|----------|-------|

| Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000 |              | TYPE I                             | TYPE II        | TYPE III       |
|--|--------------|------------------------------------|----------------|----------------|
| DEVIATION<br>FROM<br>STANDARD  | <b>MAJOR</b> | \$800 to \$1,000<br><b>\$1,000</b> | \$600 to \$800 | \$400 to \$600 |
|  | MODERATE     | \$600 to \$800                     | \$400 to \$600 | \$200 to \$400 |
|  | MINOR        | \$400 to \$600                     | \$200 to \$400 | \$100 to \$200 |